Mile High Wetland Bank response letter 18 April 2011
Sarah Fowler to: matthew.r.montgomery, Peter_Plage 05/19/2011 10:34 AM

Matt, I reviewed the letter regarding the IRT's concerns on the Phase II proposal to increase the size of the bank through active construction measures. It appears that Lori Rink agrees with our concern that the Phase II mitigation will result in a cattail dominated plant community and that the incidental wetland creation/mitigation from ground water mounding will be investigated for future crediting under Phase I.

EPA agrees with the proposal to delineate the created wetlands for additional credits under Phase I.

Sarah Fowler, Biologist
Wetlands and Watershed Unit, EPR-EP
EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
303-312-6192
fax 303-312-7206

DUE 5/20

Mile High Wetlands Group, LLC

80 South 27th Avenue
Brighton, Colorado 80601

Phone: 303.777.0188
Fax: 303.659.6077
Email: laurie@wetlandbank.com
Web Site: www.wetlandbank.com

TRANSMITTED VIA E-MAIL

18 April 2011

Mr. Tim Carey
U.S. Army Corps of Engineers, Omaha District
Denver Regulatory Office
9307 S. Wadsworth Boulevard
Littleton, Colorado 80128□6901

Re: Mile High Wetland Bank – Phase II draft prospectus and request for Phase I additions

Dear Tim:

The Mile High Wetlands Group (MHWG) is in receipt of your letter of January 27, 2011, that provides the Interagency Review Team's (IRT) initial response to our draft prospectus for Phase II. We appreciate the time and consideration that the IRT has given to our proposal to date.

There were a number of issues raised by the IRT and members of the public during the public notice period. These can be summarized into the following six categories, each of which are discussed in further detail below.

1. Ownership and land use;
2. Adequacy of water rights;
3. Conflicts with existing alkaline wetlands;
4. *Typha* control;
5. Credit release schedule; and
6. Financial assurances and site protection.

Upon reviewing the issues, our conclusion is that the current requirements dictated by the IRT with regard to *Typha* control, the credit release schedule, and financial assurance requirement are onerous, unworkable, and unrealistic. It does not make good business sense to proceed if the IRT remains unyielding on these terms. Our assumption is that the IRT's terms on these three issues are final and not subject to further negotiation. Please advise as to whether this assumption is correct.

Today we are submitting an alternate proposal that involves the acknowledgement and crediting of existing wetlands created through the efforts of Phase I. This proposal is detailed later in this letter.

Ownership and land use. We have attached the original (corrected) land deed that conveys the wetland property from FRICO to Mile High, as recorded with Adams County on May 12, 2000

(Attachment A). This deed encompasses both the Phase I and Phase II areas. This should be in duplicate to a copy previously provided to the Corps as part of the Phase I paperwork. You will note that the water rights are also conveyed by way of this deed, as the storage rights reside with the property. Reference is also made in the deed to FRICO's original recorded property deed for the Mile High Lakes of June 2nd, 1925, proof of which is recorded in the records of Adams County. Accordingly, control of the property and its uses are vested with Mile High Wetlands Group, LLC.

Adequacy of water rights. Attached is a letter prepared by John Akolt, legal counsel to FRICO, which reviews and rebuts many of the claims asserted by Middle South Platte Wetland Mitigation Bank and its legal counsel (Attachment B). In conclusion, the water rights conveyed to Mile High have historically proven, and continue to be, legally and materially adequate to support the Phase I wetlands. If pursued, the same rights in a sufficient quantity would be conveyed for use in support of the Phase II wetlands.

Conflicts with existing alkaline wetlands. The IRT visited the Mile High Bank in summer 2010 and observed both the existing Phase I and proposed Phase II sites. It was noted that additional alkaline wetlands dominated by *Distichlis* had developed in what was has been referred to as Area 3 of the Phase II proposal. It was further observed that these wetlands had likely developed due to an elevated groundwater supported by the Phase I wetland creation efforts. These wetlands were not certified through the Phase I process.

Concerns have been raised by the IRT regarding proposed Phase II excavation in Area 2 that could negatively impact these alkaline wetlands. As noted by EPA, these areas provide vegetative wildlife habitat diversity to the bank and should be avoided by expansion activities. We agree with EPA's recognition of the value of these wetlands and with the IRT's view that their impact should be avoided.

Typha control. The IRT has expressed its opinion that *Typha* control measures for both short - and long-term consideration should be determined up front. As the sponsor of the Phase I wetlands, we have considerable experience with cattail control. Based upon our experience, we believe that long-term cattail control is unrealistic.

In Phase I, intentional and aggressive measures were taken to avoid colonization by cattail, particularly in light of existing seed sources surrounding the area. These measures included plant plugging at 2' centers followed with a dense overseeding by pre-stratified wetland seed. The area was then sprinkle irrigated for a full growing season to allow for plant establishment with the intent to discourage cattail growth under standing water conditions. These measures were deemed successful when, after the first two years, the vegetative cover was very dense and absent of cattail. In the third year cattail invasion was noted near the inlet, probably due to seed influx in the surface water from upstream areas. Mile High undertook physical measures at that time to remove the new seedlings through hand pulling. When new cattail seedling emerged thereafter, we embarked upon a chemical control regime, using a wicking process to kill mature plants. Chemical application was very difficult given that the herbicides were non-selective and that the cattails were mixed with other species, resulting in the inadvertent poisoning of desirable wetland plants. Fluctuation of water depths to "flood and drown" cattails was debated, as the technique has been used successfully in other applications. But the technique has been used where cattails are a monoculture, which is not the case for Phase I. In Phase I we have a mix of desirable wetland species throughout the entire area, so flooding would have likely resulted in the inadvertent drowning of other desirable species

unable to adapt to increased water depths.

In 2005, after all of the wetland credits had been certified, we submitted a proposal to the MBRT to experiment with controlled, intensive grazing as a measure for cattail control. The idea was to temporarily drawdown the surface water, move cattle into confined areas of cattail where they would be "forced" to eat what was available, and then refill the wetland to drown out the newly cropped cattails. This proposal was met with trepidation by the MBRT and was not pursued.

After attempting various control measures, and observing wetland development and succession over an eleven year period, we are convinced that cattails have become a naturalized, albeit aggressive, species in this ecoregion that will persist once established.

In light of our experience with cattail, we believe it is unrealistic to expect that long-term control measures will have any real effect on cattail invasion, persistence, and spread. The initial measures undertaken in terms of planting, seeding and irrigating were effective in inhibiting cattail germination in the first two years and, to this point in time, from developing a monoculture of cattails (the wetland is still quite high in species composition). For Phase II, we would be willing to implement short-term cattail control measures similar to what was used in Phase I, with specific short-term performance criteria attached. However, long-term commitment to cattail control is an unreasonable expectation from both an ecological and financial perspective.

Credit release schedule. The IRT is dictating a credit release schedule of 10% upon instrument signing and posting of financial assurances, 10% upon hydrologic milestone achievement, and 10% upon achieving jurisdictional criteria. The remaining 70% would be released upon "certification" which the IRT did not define. This is contrasted with what was negotiated and implemented in Phase I as 30% upon securing the property and instrument signing, 20% upon achieving hydrologic milestones, 25% upon achieving vegetative milestones, and 25% upon achieving jurisdictional criteria. The Phase I credit release schedule worked to the satisfaction of all parties, including the MBRT, and as such was proposed for continued use in Phase II.

From the bank sponsor perspective, a significant amount of financial and technical resource is invested in the project in order to meet the first credit release milestone. At this point the property and water rights have been acquired and a minimum of one year's time has been invested in developing the bank prospectus and instrument. The pre-construction sales are a way of infusing cash flow that is essential for construction loan financing. Bank loans require up front demonstration of the ability to service debt within a year or so of construction. The Phase II credit release schedule as proposed would not be adequate to fund a construction loan, placing the burden of project financing entirely upon the sponsor.

From the IRT perspective, a tightening of the credit release schedule reduces the risk of nonperformance. In this case, however, the bank sponsor has a demonstrated ability to perform based upon the Phase I experience. The sponsor has further motivation to perform based upon the significant investment that has been made to date with property and water rights acquisition and investment of time and technical expertise. A credit release schedule as proposed by the IRT is simply not feasible from a business operating perspective.

Financial assurances and site protection. The IRT is requiring that financial assurances be provided in an amount sufficient to provide replacement mitigation, including costs for land

acquisition, planning and engineering, legal fees, mobilization, construction and monitoring. This requirement expects that enough surety be provided up front to, at a minimum, match the costs of the bank implementation. In order to fund this, a bonding agency will look for liquid capital equal to the amount that is being bonded. So, in essence, the bank sponsor will need double the capital in order to implement the actual work. We believe that this is an inappropriate request that does not fairly consider the real risks assumed by the bank sponsor.

Current Proposal for Consideration

We are requesting that the Phase I agreement be modified to reflect the development of additional wetland acreage within the project area. As was noted in the field, and in correspondence from EPA, additional alkaline type wetlands have developed in the southeast corner of Phase I. These areas are dominated by *Distichlis* and, as noted by EPA, contribute to the habitat diversity of the created wetland complex. Another area of wetlands has developed in the southwest corner of Phase I. This area was originally treated as part of Phase I, had some initial herbivory challenges, and consequently had not yet achieved jurisdictional status as of 2005. These two areas of additional wetland development are illustrated in Attachment C.

If the IRT agrees to consider the addition of these wetlands to the Phase I project area, we will engage the services of Ecological Resource Consultants (ERC) to perform an independent delineation in the two areas to determine the location and extent of existing jurisdictional wetlands. ERC conducted the delineation work in 2005. The delineation and calculation of additional wetland will be presented to the IRT in the form of an amendment to the 1999 Mile High Wetland Bank Prospectus.

Credit sales associated with the additional wetland acreage will be conducted in accordance with the terms outlined in the 1999 Mile High Wetland Bank Prospectus, as approved by way of the Mile High Wetland Mitigation Bank Agreement dated 10/12/99 (Attachment D). (Note that the agreement references the creation of up to 170 acres of wetland and enhancement of another 220 acres of existing wetland.)

Once all credit sales are exhausted, a permanent conservation easement will be granted and recorded, as described on pages 14-15 of the Prospectus.

If you have any questions about the content of this letter or with specifics of the alternate proposal, please give me a call directly at 303-777-0188.

Thanks in advance for your consideration of our submittal.

Yours truly,
MILE HIGH WETLANDS GROUP, LLC

Laurie Rink
Manager

cc: Matthew Montgomery, Army Corps
John Akolt, FRICO

ATTACHMENT A

Further coordinating for phase I more details

Correction Deed

This indenture, made May 4, 2000, between The Farmers Reservoir and Irrigation Company, a Colorado Corporation, organized and existing under the laws of the State of Colorado, having its principal place of business at 80 South 27th Avenue, Brighton, CO 80601, Grantor, and Mile High Wetland Group, LLC, a Colorado Limited Liability Company, of 80 South 27th Avenue, Brighton, CO 80601, Grantee. (The terms "Grantor" and "Grantee" include the respective heirs, successors, successors-in-title, legal representatives and assigns of the parties where the context requires or permits.)

Grantor, as contribution to the capital of the Grantee, the receipt and sufficiency of which is acknowledged, has granted, bargained, sold, and conveyed and by these presents does grant, bargain, sell, and convey to Grantee, all of that certain tract or parcel of land lying and being in Adams County, Colorado, as more particularly described as follows:

That portion of the East ½ of the Southeast ¼ of Section 1, Township 1 South, Range 66 West of the 6th P.M., and that portion of the West ½ of the Southwest ¼ of Section 6, Township 1 South, Range 65 West of the 6th P.M. lying East of the Beebe Canal as defined and described in Deed recorded June 2, 1925 in Book 136 at Page 61, County of Adams, State of Colorado, together with 60 acre feet of water delivered solely to the above property from the Bowles Reservoir No. 1 decree, adjudicated 8/2/1918 in Case No. 54658 with a priority date of 1/30/1907, administrative number: 20848.00000.

To have and to hold the property, together with all and singular the rights and appurtenances thereof, to the same belonging or in any way appertaining, to the only proper use and benefit of Grantee in fee simple. This deed is made expressly subject to the exceptions, exclusions and reservations of record and claims of persons in possession, if any. Subject to the title matters set forth herein, Grantor will warrant and forever defend the right and title to the tract or parcel of land described above to the Grantee against the claims of all persons claiming by, through or under Grantor, and not otherwise.

The purpose of this deed is to correct an error in the property description as recorded in that certain deed recorded March 24, 2000 in Book 6074 at Page 504 of the records of Adams County Colorado [the property being described as being in part in Section 6 Township 1 South Range 66 West of the 6th P.M. when the true description of the property is in part Section 6 Township 1 South Range 65 West of the 6th P.M.] affecting the description of Section 6 Township 1 South, Range 65 West of the 6th P.M. as correctly set forth above.

In witness of the above, Grantor has caused its seal to be affixed to this instrument, and this instrument to be signed by its duly authorized officers on the date written above:

The Farmers Reservoir and Irrigation Company

By _____
Its: President

Attest: _____
Secretary

State of Colorado }
} ss.
County of Adams }

The above instrument was acknowledged before me on May 4, 2000 by _____, its President and _____, its Secretary of The Farmers Reservoir and Irrigation Company.

Witness my hand and official seal

_____
Notary Public

My commission expires: _____

00669770
5/12/2000 10:27:45
BK: 6125 PG: 0726-0726
5.00 DOC FEE: 0.00
CAROL SNYDER
ADAMS COUNTY

ATTACHMENT B

AKOLT & AKOLT LLC
1460 Elizabeth Street
Denver, CO 80206

John P Akolt III
(303) 903-7029

John C Akolt II
(303) 903-6786

For Matters Related to the Farmers
Reservoir and Irriegtion Company
80 South 27th Avenue
Brighton, Colorado 80601
Phone (303) 659-7373
Fax (303) 659-6077

April 14, 2011

U.S. Army Corps of Engineers
Denver Regulatory Office
9307 South Wadsworth Blvd.
Littleton, CO 80128-6901

Attn: Matt Montgomery
Re: Mile High Wetlands Bank , Phase II

Dear Mr. Montgomery:

This letter is to respond to the letter of Mr. David Hill dated December 8, 2010 submitted on behalf of the Middle South Platte River Wetlands Bank. I am the general counsel for the Farmers Reservoir and Irrigation Company, a principal member of the Mile High Wetland Bank LLC, as a mutual ditch company, the owner and operator of the water supply system for Phase II of the Mile High Wetlands Bank.

In his letter, Mr. Hill makes several comments that are wrong in fact and, in my opinion, provides his personal comment on the adequacy of the Bowles Reservoir rights for Phase II of the Mile High Wetlands Bank without any analysis of the Bowles decree or the proven adequacy of the water rights for Phase I of the Mile High Wetlands Bank.

1. Mr. Hill references a change of water right proceeding, Case 02CW403, that involved rights decreed to Barr Lake and to the Burlington O'Brian Canal. That case is presently on appeal. Mr. Hill represented an Objector in that case. As Mr. Hill is aware from his participation in that case, *none* of the rights in the Bowles Reservoir and Seep Ditch System, of which the Bowles Reservoirs Nos. 1 and 2 are a part, were involved in that case. Thus no part of the decree in Case No. 02CW403 addressed the Bowles Seep Ditch System Reservoirs. The limits and conditions in that case were solely concerned with the rights and operation of the rights decreed to Barr Lake and the 1885 and 1908 direct flow rights decreed to the Burlington Canal.. The issues regarding recapture of seepage from the Barr Lake system addressed the rights attendant to the specific

priorities that were before the Court, which did not include any consideration of the Bowles Seep Ditch System Reservoirs.

2. I have attached the entire decree for the Bowles Seep Ditch System Reservoirs ("Bowles Decree"). Contrary to Mr. Hill's statement that seepage cannot be lawfully diverted, Section 2 of the Bowles Decree provides:

> They take their supply of water from the South Platte River through the Burlington Ditch and its extension formerly know as the Bowles Seepage Ditch, now enlarged and known as the Beebe Canal. ***They also have supply from seepage naturally collecting in their feeder and in their basins.*** [Emph. Supp].

Section 5 of the Bowles Decree further provides the amounts adjudicated from the South Platte River are *without prejudice to* claimants right to any seepage water collected in said reservoirs. The Bowles Decree does not, as Mr. Hill state, *exclude* seepage as a source of supply for the Bowles reservoirs.

In accord with the response of Mr. G. Michael Bender for the Office of the State Engineer (letter dated December 10, 2010), the Bowles Seep Ditch System Reservoirs were decreed for the irrigation of approximately 6,600 acres. The storage of water in Bowles Reservoir No. 1 is consistent with the terms of the Bowles Reservoir decree and its use for the maintenance of wetland plants is within the *irrigation uses* decreed to that right.

3. Mr. Hill's reference to Division Engineer James Hall's letter is consistent with FRICO's position. Mr. Hall was addressing whether Barr seepage could be recaptured *without a decree* such as is permitted for trans-basin and fully consumptive use decrees. Specifically, Mr. Hall was addressing whether the decree for Milton Lake (*not* one of the Bowles Seep Ditch Reservoirs) permitted the diversion of seepage water in the Beebe Draw. Mr. Hall's view was that the *Milton Lake decree* does not have Beebe Draw seepage as a source for that decree. Mr. Hall was not asked to and did not present any opinion of the Bowles Seepage Ditch System decrees. In this letter, FRICO does not dispute Mr. Hall's position concerning the Milton Reservoir decree; but notes that Mr. Hall was not addressing the Bowles Decree that *does* include Beebe Basin seepage as a source of supply for the Bowles Reservoirs. Mr. Jim Hall was not addressing the Bowles Decree – only that such a decree would be required to store and use Beebe Seepage in the Beebe basin.

4. Regardless of whether the Bowles Reservoirs are filled from seepage or from the South Platte River directly, the Bowles Decrees were not part of the 02CW403 adjudication and they remain exactly as adjudicated in 1918, *i.e.* the Bowles Reservoir No. 1 is decreed for 700 a.ft. per annum with a priority date of January 30, 1907. The Bowles Reservoir No. 2 is decreed for 475 a.ft. per annum with a priority date of April 14, 1908.

5. Mr. Hill further states his unsupported opinion that a 1907 decree is "too junior to provide reliable water for irrigation during much of the year." This conclusion ignores the sufficiency of the Bowles Reservoir No. 1 to have sustained the Mile High Wetlands Bank to date, including 2002 the driest year of record in the South Platte Basin. Mr. Hill further failed to point out that the 1907 priority date for the Bowles Reservoir No. 1 is *senior* to the 1908/1909 FRICO rights for Barr Lake which sustain commercial irrigation of 23,000 acres below Barr Lake and is senior to the rights of the Henrylyn Irrigation District (1910, 1911 and 1916) which support the irrigation of the 30,000 acres that comprise the District lands. Moreover, as a *storage* right, the Bowles Reservoir does not have to divert through the length of the irrigation season. It is the purpose and effect of a *storage reservoir* that it store water when available at the peak of the hydrograph which then is released (or in the case of the Mie High Wetlands consumed in place) during the irrigation season when the rights are no longer in priority *to divert* water from the stream.
The actual experience of the Mile High Wetland Bank over the past 10 years confirms that the 1907 storage right for the Bowles Reservoir No. 1 is an adequate water right for the maintenance of the Mile High Wetland. This opinion is consistent with the December 10, 2010 response from the Office of the State Engineer.

6. FRICO has not and does not propose to allocate any of the rights that were the subject of the 02CW403 application for use by the Mile High Wetland. Mr. Hill's statement that none of the rights that were the subject of Case 02CW403 were allocated to FRICO, as a corporate entity, is correct. What Mr. Hill did not disclose was that the Bowles Reservoir rights were not included in the 02CW403 proceeding.

7. Colorado statutes, specifically C.R.S. 7-42-105, provide for the ownership of capital stock by the Company itself. FRICO has 10,500 shares that are authorized, 8,450 of which are presently outstanding to shareholders and 2,050 which remain in the FRICO treasury as a corporate asset.

8. As a mutual ditch company FRICO has the legal right to allocate water among its various divisions and to issue shares to the extent authorized by its Articles. Mr. Hill's statement that shares cannot be issued nor water allocated except by a "super majority" of its directors is also correct. What Mr. Hill does not address is that the allocation of 60 are feet of water to the Mile High Wetland Bank was, in fact, authorized by just such a majority. Thus, Mr. Hill's inference that the allocation of Bowles Reservoir No. 1 water to the Mile High Wetland Bank is without authority is unfounded.

9. Phase II of the Mile High Wetland Bank is to be constructed within the original decreed perimeter of the Bowles Reservoir No. 1. The historical configuration of the Bowles Reservoir No. 1 provides for the maintenance of a wetland in what would otherwise be open water in the upland shallows of the reservoir. As such the Mile High wetland is consistent with maintaining a wetland in the perimeter shallows of the reservoir, yet maintaining the ability to store and release water from the balance of the reservoir for other decreed uses. As FRICO addresses the future uses of the Bowles Seepage Reservoir system it can do so in a manner that maintains the integrity of the "shallows" for the wetland bank, while permitting the balance of the reservoir to be used for other decreed uses.

10. Mr. Hill states no basis for his inference that lowering of the Phase II area to 6" below the maximum *storage elevation* of the Bowles Reservoir No. 1 will expose groundwater. This inference should be afforded no weight beyond the conjecture that it is. In fact, Mile High Wetlands Bank has conducted groundwater elevation studies in the Phase II area and the grading for Phase II will not expose ground water to create surface evaporative loss.
FRICO and the Mile High Wetland Bank, LLC, are familiar with the regulations of the State Engineer and there is no plan to expose tributary ground water that would require an augmentation plan for future operations.

11. Mr. Hill's comments, submitted on behalf of the competing wetland bank for this region, is not consistent with the stability of the water supply demonstrated by Phase I of the Mile High Wetland Bank over the past 10 years. As such, the apparent bias of Mr. Hill's position should be taken into proper account.

12. As a final note, it is somewhat ironic that Mr. Hill would raise the adequacy of the Bowles Reservoir decree for maintenance of a wetland. Under Colorado law there is a clear distinction between *storage* rights and *direct flow* rights. *Direct flow* rights are to be applied for immediate application to fields for crop consumption. An informal policy of the State Engineer is that direct flow rights may be held for 72 hours before application to a field, so as to permit more efficient irrigation efficiency. Any direct water held for more than 72 hours would be deemed to be an unlawful *storage* of water that is not permitted a direct flow decree. To my knowledge, Mr. Hill's wetland client uses a *direct flow* right to maintain its wetland. It is clear, however, that such water is not consumed within 72 hours of being held in the wetland, and upon such basis the water not then consumed would be an unlawful *storage* of a direct flow decree. At the time of permitting that wetland bank, several appropriators in the Clear Creek basin (FRICO being among them) considered challenging the use of the direct flow water as an unlawful *storage* of that right. While

that challenge was not undertaken at that time, unlawful use of a water right does not have any concept of statute of limitation or "adverse possession" and is subject to challenge at any time.

In his December 10, 2010 response on behalf of the Office of the State Engineer, Mr. Bender referenced this issue in his statement that [direct flow] water delivered to a wetland should not be permitted to "pond" for more than 48 hours after delivery to the wetland for consumption by the wetland crops. (It is my understanding that the 48 hours would commence on the day after delivery, thus comprising the "72 hour" temporary storage use that I referenced above). This is the issue that I have referred to in this section. The concern of the State Engineer is that direct flow water not be "stored", as such requires a *storage right* not a *direct flow right* for lawful "ponding" of water.. The Mile High Wetland Bank's use of a *storage right*, rather than a direct flow right, allows for the lawful "ponding" of water in excess of 48 hours as well as the beneficial use of such water to sustain the wetland crops. In contrast, the Middle South Platte River Wetland Mitigation Bank has only a *direct flow* decree, and in accord with Mr. Bender's letter, any "ponding" such water for more than 48 hours after delivery to the wetland would constitute an unlawful use of a direct flow decree.

Phase II of the Mile High Wetland is supported by FRICO and FRICO has the lawful authority and the resources to adequately provide a stable and adequate water supply for Phase II of the wetland bank as it has demonstrated over the past 10 years for Phase I of the Mile High Wetland Bank.

Sincerely,

John Akolt, III
General Counsel

ATTACHMENT C


Phase I Wetland Creation—30 acres
Beebe Canal
Aug 22, 2008
1:07pm
Wetlands may exist in this area as a result of Phase I treatments
Railroad
Wetlands may exist in this area as a result of Phase I treatments
168th Avenue
1033 ft
© 2008 Tele Atlas
Gun Club Road
Google
39°59'17.03" N 104°43'03.35" W
elev 5023 ft
Feb 2002
Eye alt 8599 ft

ATTACHMENT D

331-1977

Mile High Wetland Mitigation Bank Agreement

/No. 1

This agreement, entered into by the Mile High Wetland Group, LLC: Bromley Park Metropolitan District; U.S. Environmental Protection Agency: U.S. Fish and Wildlife Service: Colorado Division of Wildlife, and U.S. Army Corps of Engineers (COE), is for the purpose of establishing the Mile High Wetland Mitigation Bank (Bank). The Bank will be used to mitigate for unavoidable wetland impacts approved through the COE, who is responsible for administering Section 404 of the Clean Water Act. The creation, operation, and use of the Bank will be in accordance with the Mile High Wetland Mitigation Bank Prospectus, Appendix 1 to this agreement.

The objective of the Bank is to create approximately 170 acres of wetlands, and enhance approximately 220 acres of existing wetlands. The goal of the bank is to create Emergent, Scrub-Shrub, and Aquatic Bed functional wetlands, with Persistent, Deciduous, and Rooted Vascular Aquatic subclasses, respectively.

The primary geographic service area for this bank will encompass portions of the Middle South Platte/Cherry Creek, Upper South Platte, and Clear Creek Watersheds (U.S. Geological Survey's Hydrologic Units #10190003, #10190002, and #10190004). The upper elevation limit of the primary service area will be 6,000 feet. At the discretion of the COE, credits may be approved for impacts occurring outside of the primary geographic service area.

BY: _____ Date Signed: 9/21/99
Lauranne P. Rink, Managing Partner
Mile High Wetlands Group, LLC

BY: _____ Date Signed: 9/17/99
Robert A. Lembke, President
Bromley Park Metropolitan District No. 1

BY: _____ Date Signed: 9/29/99
William P. Yellowtail, Regional Administrator
U.S. Environmental Protection Agency, Region VIII

BY: _____ Date Signed: 10/5/99
LeRoy W. Carlson, Colorado Field Supervisor
U.S. Fish and Wildlife Service

BY: _____ Date Signed: 10/1/99
Kris Moser, Northeast Regional Manager
Colorado Division of Wildlife

BY: _____ Date Signed: 10/12/99
Mark E. Tillotson, Commander
U.S. Army Corps of Engineers, Omaha District

Mile High Mitig. Bank Phase II - response 18 April 2011

★ → agreed w/ new wetlands from Phase I and to not disturb

→ agree typha control unrealistic for Phase II
" long term control unreasonable

Credit release schedule